

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA**

**J.C. BAKER & SON, INC.  
AND BAKER OIL COMPANY,**

**Appellants,**

**v.**

**Appeal No. 22-03-EQB**

**KATHY EMERY, P.E., DIRECTOR,  
DIVISION OF WATER AND WASTE  
MANAGEMENT, WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION,**

**Appellee.**

**Order Granting Joint Motion Requesting that the Bifurcated Hearing Order  
be Amended to State that it is a Final Order.**

On February 27, 2024, the parties, by their respective legal counsel, filed a joint motion requesting that the Bifurcated Hearing Order entered on February 16, 2024, to be considered a Final Order of the matter tried before the West Virginia Environmental Quality Board (“Board”).

The underlying appeal was filed by J.C. Baker & Son, Inc., and Baker Oil Company (hereinafter jointly referred to as “Baker Oil”), and with the Board challenging Order No. UST-22-005 issued by the West Virginia Department of Environmental Protection (“WVDEP”) on April 26, 2022, and pursuant to the Underground Storage Tank Act (West Virginia Code, Chapter 22, Article 17). WVDEP found Baker Oil to be the owner and/or operator of several underground storage tanks where releases or leaks have occurred. WVDEP deemed Baker Oil as the responsible party and ordered Baker Oil to take corrective action to comply with all “pertinent laws and rules.” (See

Order No. UST-22-005 – Order for Compliance). Baker Oil sought reversal of all provisions of Order No. UST-22-005.

A motion to stay enforcement of Order No. UST-22-005 was contemporaneously filed by Baker Oil and was granted by an agreed order entered on June 8, 2022. Then, Baker Oil moved to bifurcate the hearing to address the limited issue of whether they were ever the owners or operators of the underground storage tanks (“USTs”). By order entered September 9, 2022, the Board granted Baker Oil’s motion.

The hearing conducted on February 8 and 9, 2023, only addressed the issue of whether Baker Oil was ever the owners or operators of the USTs at issue. If it was determined that Baker Oil was the responsible party, a second hearing would be conducted to address Baker Oil’s appeal of WVDEP’s order directing it to take corrective actions with respect to releases and leaks from USTs.

After consideration of proposed findings and conclusions, response and reply briefs, supplemental briefs, Certified Record, the testimony and evidence presented at the hearing, exhibits, and arguments of legal counsel, the Board, by unanimous decision, affirmed Order No. UST-22-005 only as it relates to the issue of ownership of the USTs.

Although the parties have not provided any legal authority to support their position that the Bifurcated Hearing Order should be treated as a Final Order, the Board grants the joint motion as it appears that Baker Oil seeks to appeal the Board’s finding that WVDEP proved by a preponderance of the evidence that Baker Oil was the owner of the subject USTs, and WVDEP does not object to Baker Oil seeking immediate appeal although there are remaining issues to be addressed

at hearing. Accordingly, the Joint Motion is **GRANTED**. The title of the Bifurcated Hearing Order is amended to state as follows:

*Final Order (Owner of Subject USTs)*

It is so **ORDERED** and **ENTERED** this 4<sup>th</sup> day of March 2024.

**West Virginia Environmental Quality Board**



**Dr. Edward Snyder, Chairman**

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA**

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**Appellee.**

**CERTIFICATE OF SERVICE**

I, Kenna M. DeRaimo, Clerk for the Environmental Quality Board, hereby certify that on this day, the 4<sup>th</sup> of March, 2024, a true copy of the foregoing **ORDER GRANTING JOINT MOTION REQUESTING THAT BIFURCATED HEARING ORDER BE AMENDED TO STATE THAT IT IS A FINAL ORDER** has been served upon the following:

R. Terrance Rodgers, Esq.  
KAY CASTO & CHANEY PLLC  
Post Office Box 2031  
Charleston, WV 25327  
*Counsel for Appellants  
J.C. Baker & Son, Inc. and  
Baker Oil Company*

*Via Certified U.S. First Class Mail*

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Charles S. Driver, Esq.  
WV DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF LEGAL SERVICES  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304  
*Counsel for WVDEP*

*Via Interdepartmental Mail*

  
Kenna M. DeRaimo, Clerk